IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1661 OF 2002

IN

SUIT NO. 877 OF 1993

Ahmed R. Currim and ors. .....**Plffs.**
vs.
Lakhamshi Meghji Chheda and ors. .....**Defnds.**

A L O N G W I T H
NOTICE OF MOTION NO. 3743 OF 2004
IN
SUIT NO. 877 OF 1993

Ahmed R. Currim and ors. .....**Plffs.**
vs.
Lakhamshi Meghji Chheda and ors. .....**Defnds.**

A L O N G W I T H
NOTICE OF MOTION NO. 2284 OF 1996
IN
SUIT NO. 877 OF 1993

Ahmed R. Currim and ors. .....**Plffs.**
vs.
Lakhamshi Meghji Chheda and ors. .....**Defnds.**

Chirag Balsara a/w. S.H. Merchant and Sushma Satpute i/b. M and M Legal Ventures for the plffs.

C.S. Kapadia i/b. A./B. Shinde-Intervener.

U.J. Makhija a/w. K.N. Gaikwad-defendant no.10

(B.M.C.)

D.D. Madon a/w. Ketan Parikh i/b. Prakash and Co. for defendant no.1 to 4.

CORAM: S.U. KAMDAR, J.

DATE : 15th September, 2005.

P.C. :.

1. Notice of Motion No. 1661 of 2002, 2284 of 1996 and 3743 of 2004 are clubbed together because they are motions initiated by the parties in the present suit for reliefs which are over lapping.

2. The present suit which has been filed by the plaintiffs claiming to be the tenants inrespect of the building known as ‘Chheda Sadan’. Various other reliefs sought are firstly that the illegal and unauthorised alterations carried out by the defendant no.1 on the ground floor premises of the said building be rectified and unauthorised alterations be demolished. It is further prayed

that the plaintiffs should not be permitted to carry out alterations to the said premises except in accordance with the provisions of law. In the said suit by amendment the order passed by the Hon’ble Minister (Revenue) regularising the unauthorised construction inrespect of the ground floor structure of the building which is in use, occupation and possession of the defendant no.1 is also challenged in the present suit.

3. In the nutshell the contention of the plaintiff is that the plaintiff being the tenants inrespect of the said property is affected by virtue of unauthorised and illegal construction carried out on the ground floor structure by the defendant no.1. It is further the case of the plaintiff that the open area and compound of the building has been occupied and or illegally encroached open by putting up the shop premises known as ‘Satyam collection". It is also the case of the plaintiffs that such illegal and unauthorised encroachment should be rectified and the property should be preserved in its original

condition. In the present suit the three notice of motions has been taken out.

4. In Notice of Motion No. 2284 of 1996 a prayer is sought that till the hearing and final disposal of the suit the defendant should be restrained from carrying out any construction, alterations, additions and/or deletions of any king to any part or portion of the suit premises known as Chheda Sadan and further restraining them from causing any nuisance or changes of user as described in the Schedule‘A’ of the said Notice of Motion and in the letters dated 20.10.96 and 16.2.96 of the Executive Engineer,Presidency Division, Public Works Department. By prayer (b) of the motion it has been prayed that a mandatory order and injunction should be granted to the plaintiff directing the defendants to remove the additions, alterations and other works illegally carried out by them in the suit premises.

5. By prayer (c) of the Notice of Motion an injunction is sought that the defendant should be

restrained from in any manner obstructing and/or objecting to the carrying out of structural repairs to the building by the Bombay Building Repair and Bombay Reconstruction Board and/or through the NOC issued by the said board to the NOC holder inrespect of the said building.

6. In Notice of Motion no. 1661 of 2002 reliefs are sought that this court should issue temporary order and injunction restraining the defendant from giving effect to the order dated 22.10.96 passed by the then Revenue Minister of the State of Maharashstra who is the defendant no.6 in the present proceedings. Alternatively the relief is sought that the said order should be complied with alongwith all terms and conditions thereof.

7. In Notice of Motion NO. 3473 of 2004 the plaintiff has once again sought an order that by an injunction the defendant should be prevented from preventing, hindering or obstructing the plaintiffs and/or plumbers and contractors engaged by them

from carrying out the work to repair leakages of the overheard water tanks and to interconnect the overhead water tanks and/or any other works related to water tanks. By prayer (b) of the motion a prayer is sought that the plaintiffs vehicles should not be obstructed from entering and/or leaving the said building from the North East and South West entrances of the said building. A relief is also sought that the work which has been carried out after the status-quo order passed should be directed to be demolished and/or additional construction should be removed. By prayer (d) an appointment of commissioner is sought for the purpose of making report inrespect of the alterations, additions or construction allegedly carried out by the defendant no.1 contrary to the status-quo order passed by this court. By prayer (e) an injunction is sought restraining the defendants from carrying out any additions and/or alterations or making any additional constructions or any other structural work inrespect of the suit premises.

8. Learned counsel for the plaintiff insupport of the aforesaid directions has contended that by an ad-interim order dated 5.8.1996 passed by this court In Notice of Motion No. 2284 of 1996 this court directed demolition and removal of unauthorised alterations inrespect of the suit structure. Against the said order passed in the Notice of motion an appeal was preferred which has been ultimately disposed off by an order dated 19.11.2003 directing the parties to maintain status-quo inrespect of the said properties. It is the case of the plaintiff that in the light of the additions and alterations carried out by the defendant nos.1 to 4 as pointed out by the plaintiff this is a fit case in which at the interim stage the order of demolition should be passed inrespect of the additions and alterations which are illegally carried out by the plaintiff contrary to the provisions of the BMC and Maharashtra Regional Town Planning Act. Learned counsel for the plaintiffs has drawn my attention to the various averments made in the affidavit in support as well as to the plaint in support of the

aforesaid contention. In so far as these prayers are concerned I am of the opinion that at the interim stage the status-quo position as existing as on the date of the suit cannot be altered by passing mandatory order and injunction directing the defendants and/or corporation to demolish the alleged unauthorised construction carried out by the defendant nos.1 to 4. In the case of **Maharwal Kewaji Trust Faridabad vs. Baldev Das reported in 2005(1) Mah.L.J. 7043** the Supreme court has held that interim orders are meant for protections of the parties and the status-quo inrespect of the properties as on the date of the suit ought to be preserved till the hearing and final disposal of the suit and the status-quo cannot be altered by passing mandatory orders or by refusing to grant injunction so as to defeat the determination of rights finally by the party. Interim orders are meant for preserving the property so as to determine the dispute between the parties and they are not meant to be passed in such a manner that a part of the suit itself is either decreed and/or is made infructious. In that light of the matter I am

of the opinion that the relief sought by the learned counsel for the plaintiff for passing mandatory order for demolition at this stage cannot be granted and thus the said application is rejected. However in so far as the injunction restraining the defendant nos.1 to 4 from carrying out any further alterations, additions in the said premises contrary to the provisions of the BMC and Maharashtra Town Planning Act, 1966 is concerned learned counsel for the defendants nos.1 to 4 gives an undertaking to this court that he will not carry out any further alterations and/or additions inrespect of the suit premises without prior permission from all authorities as may be necessary under the various provisions of law and without taking prior permission from this court. However it is clarified that this will not apply to the case of repairing/renovating or making of any furniture and fixtures, putting tiles to the premises or carrying out painting work. Learned counsel has also further contended that he is giving the aforesaid undertaking without prejudice to his right and contentions in the suit inrespect

of the subject matter of the suit nor he admits that any alleged unauthorised alterations or additions are carried out by him contrary to the provisions of law. In the light of the aforesaid undertaking in so far as prayer (e) is concerned, prayer (e) of the Notice of Motion No. 3743 of 2004 does not survive and the same is disposed off accordingly.

9. In so far the access to the garage and the main building is concerned including the fire exit access, learned counsel for the defendant no.1 states that he is not blocking the said access and the garage has an access available from the respective garage to the road save and except garage no.3. He further states that the question of access is not even the subject matter of the suit. Further without prejudice to his rights and contentions in the suit he gives an undertaking to this court that he will keep the access open and available to all garages except garage no.3 for accessing the said garage from the road, both for ingress and egress for the tenants to whom

respective garages are allocated. He also gives an undertaking that the entrance of the main building which is a entrance for every person to enter and exit will be open and obstruction free and he will not in any manner encroach open and carry out any unauthorised construction or obstruct the said access to the building. In so far as the fire exit is concerned he states that the said exit is also open and available and is not encroached upon. He also gives an undertaking to this court that the said access will be kept free for access as fire exit. In so far as garage no.3 is concerned it is the case of the defendant nos.1 to 4 that an unauthorised constructions has been put up in front of the garage by one of the person without his authority namely by Mr. Anokhilal. The said constructions are infact obstructing the entry and exit to garage no.3. Learned counsel for the defendant nos.1 to 4 states that the said structures alongwith one another structure both are unauthorised. In the aforesaid circumstances I direct the BMC who is the defendant no.10 in the present proceedings to take action for demolition

of such unauthorised structures constructed by the said occupiers as per section 351 of BMC Act. The Corporation is directed to initiate the action within 4 weeks from today and after giving the hearing pass necessary orders including for the demolition thereof within a period of 8 weeks therefrom. If the construction is found unauthorised then the Corporation is directed to demolish the same if not removed by the occupier as contemplated u.s. 351 of the said Act. In view of the aforesaid undertaking given by the defendant no.1 the prayer (b) of Notice of Motion no. 3743 of 2004 does not survive.

10. In so far as prayer (c) is concerned I am of the opinion that if there is a breach of the status quo order passed by this court then the plaintiff will be at liberty to adopt appropriate remedy either in form of application under O.39 R.2A of the CPC or under contempt of Courts Acts. On the facts as set out in the present proceedings it is not possible to give opinion one way or the other that there is a breach of status quo order passed,

by the defendant nos.1 to 4. In that view of the matter I am not inclined to pass any order in terms of prayer clause(c) of the said notice of Motion No. 3743 of 2004.

11. In so far as prayer (d) of the motion is concerned for appointment of the Commissioner I am also not inclined to pass any such order at this stage. The commissioner cannot be appointed for the purpose of gathering evidence. The suit itself is based on an allegation that there is an unauthorised construction and/or alteration carried out by the defendant no.1. By getting the commissioner appointed the plaintiff cannot create evidence subsequent to the filing of the suit in and that view of the matter decline to appoint Commissioner for carrying out inspection as sought for. However the issue is kept open at the final hearing of the suit and if the court at the hearing of the suit finds necessary to appoint Commissioner then the same can be done at that stage.

12. In so far as prayer (a) of the Notice of

Motion No. 3743 of 2004 and prayer (c) of the notice of Motion No. 2284 of 1996 is concerned learned counsel for defendant nos.1 to 4 states that all necessary repair work including the work of water tankers has been carried out. He has produced the certificate of the plumber to show that the water tanks are replaced. He further states that the new water tanks placed will give water connection to the existing tenants of the buildings. It is further made clear that in case of a need to repair the said water tanks the plaintiffs will be entitled to carry out any future repairs to such tanks if defendant do not comply with its obligations to do so. In view of the aforesaid directions both the Notice of Motion No. 2284 of 2003 and 3743 of 2004 are disposed off.

13. In so far as the order of regularisation by the Minister is concerned learned counsel for the defendant has filed affidavit that subsequently the said order is already complied with. In that view of the matter the defendant will be at liberty to comply with the terms and conditions of the said

order passed by the Hon’ble Minister but the same will be without prejudice to the rights and contentions of the plaintiffs to challenge the said order. The defendant nos.1 to 4 will abide by the terms and conditions thereof at their own cost and risk. In that view of the matter no other reliefs are necessary. Learned counsel for defendant nos.1 to 4 states that the electricity meter which is obstructing the access to the garage no.3 will be removed in accordance with the directions of the minister under the impugned order. After the impugned order is made then the BEST to proceed with the same in accordance with the same and there is no restrain from the BEST for effecting the shifting of the meter. All 3 motions are disposed off accordingly with no order as to costs.

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